

**RULES
OF THE
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

**CHAPTER 0180-24
RULES PERTAINING TO HOME EQUITY CONVERSION MORTGAGES**

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0180-24-.01. IN GENERAL.

- (1) *Purpose.* In enacting the Home Equity Conversion Mortgage Act, (*T.C.A. §47-30-101 et seq.*) the General Assembly expressed its intent: (1) to authorize reverse mortgage loans under the provisions, terms and conditions imposed under the act and (2) that nothing in the act shall be construed to apply to or restrict any loan, mortgage or deed of trust which is valid under any other provision of law. The purpose of this rule is to implement and provide for the enforcement of the provisions of the act. This rule shall not require any federally chartered institution to seek authorization from the commissioner to engage in any activity or transaction specifically authorized, without regard to state law, by federal law or regulation.
- (2) *Scope.* The provisions of this rule shall govern the implementation and enforcement of the Home Equity Conversion Mortgage Act. (“the Act”)
- (3) *Definitions.* For purposes of this rule, the following definitions shall apply, unless the context otherwise requires:
 - (a) “Act” means the Home Equity Conversion Mortgage Act codified as Title 47, Chapter 30 of the Tennessee Code Annotated.
 - (b) “Applicant” means those entities which to become authorized must submit an application to the commissioner pursuant to *T.C.A. §47-30-103(c)* and Chapter 0180-24-.04. However, for the sole purpose of Chapter 0180-24-.01(3) the term applicant shall also include those entities seeking designation as an authorized lender by providing notice to the commissioner pursuant to *T.C.A. §47-30-103(b)* and Chapter 0180-24-.03.
 - (c) “Authorized lender” or “lender” means:
 1. A bank savings and loan association, savings bank, savings institution, or credit union chartered under the laws of the United States or of Tennessee;
 2. The Tennessee housing development agency; provided, that such agency has authority by THDA board resolution to issue mortgages under this chapter; or
 3. Any other person authorized to make home equity conversion loans by the commissioner of financial institutions;
 - (d) “Borrower” means a natural person who occupies and owns in fee simple individually, or with another borrower as tenants by the entireties or as joint tenants with right of survivorship, an interest in residential real property securing a reverse mortgage loan, and who borrows money under a reverse mortgage loan;

(Rule 0180-24-.01, continued)

- (e) “*Commissioner*” means the commissioner of financial institutions;
- (f) “*Counselor*” means an individual who has completed a training curriculum on reverse mortgage counseling provided or approved by the United States department of housing and urban development and whose name is maintained on HUD’s list of approved reversed mortgage counselors;
- (g) “*Cost*” means the average salary and actual travel expenses directly attributable to the field staff examining the financial institution and such expenses of any supervisory or other staff required as a result of examination findings.
- (h) “*Home Equity Conversion Mortgage Loan*” means a loan for a definite or indefinite term:
 1. Secured by a first mortgage or first deed of trust on the principal residence of the mortgagor;
 2. The proceeds of which are disbursed to the mortgagor in one (1) or more lump sums, or in equal or unequal installments, either directly by the lender or the lender’s agent;
 3. That requires no repayment until a future time, upon the earliest occurrence of one (1) or more events specified in the reverse mortgage loan contract; and
 4. Is labeled clearly on the face of the note and deed of trust or mortgage “This is a Home Equity Conversion Mortgage Loan pursuant to Tennessee Code Annotated, Title 47, Chapter 30”. (i) “*HUD*” means the United States department of housing and urban development;
- (j) “*Outstanding balance*” means the current net amount of money owed by the borrower to the lender, calculated in accordance with § 47-30-106, whether or not the sum is suspended under the terms of the reverse mortgage loan agreement or is immediately due and payable;
- (k) “*Reverse Mortgage*” means a mortgage or deed of trust securing a home equity conversion loan or reverse mortgage loan;
- (l) “*Reverse mortgage loan*” means a home equity conversion mortgage loan issued under the terms of this chapter; and
- (m) “*Savings Institution*” means a savings and loan association or a savings bank.

Authority: T.C.A. §§ 47-30-102 and 47-30-116. **Administrative History:** Original rule filed January 31, 1994; effective May 31, 1994.

0180-24-.02. REQUIREMENT OF DESIGNATION AS AN AUTHORIZED LENDER. No person, firm or corporation shall engage in the business of making reverse mortgage loans, without such person, firm or corporation having first been designated by the commissioner as an authorized lender.

Authority: T.C.A. §§ 47-30-103; 47-30-116. **Administrative History:** Original rule filed January 31, 1994; effective May 31, 1994.

0180-24-.03. NOTICE REQUIREMENTS.

- (1) The Tennessee housing development agency, and any bank, savings institution, or credit union, shall be designated an authorized lender by providing notice to the commissioner of its intent to make any home equity conversion loan or reverse mortgage loan not less than thirty (30) days prior to making any such loans. The notice shall state an effective date, shall be made on a form prescribed by the commissioner and shall contain all information required by the commissioner and contain evidence that the applicant is an approved HUD lender. The commissioner may object to the notice by denying the designation prior to the effective date and shall state in the objection any reasons therefor. In determining whether to object to the notice, the commissioner may consider the information provided in the notice as well as any other information the commissioner deems relevant. Such information may include but not necessarily be limited to the experience, character, management and financial condition of the entity providing the notice.
- (2) The commissioner may authorize a lender to begin making reverse mortgage loans prior to the expiration of the thirty (30) day notice period required under paragraph 0180-24-.03(1) above.

Authority: T.C.A. §§ 47-30-103 and 47-30-116. Administrative History: Original rule filed January 31, 1994; effective May 31, 1994.

0180-24-.04. APPLICATION REQUIREMENT.

- (1) Any person, firm or corporation (other than a bank, savings institution or credit union) seeking to engage in the business of making reverse mortgages may submit to the commissioner a written application for authorization to make reverse mortgage loans.
- (2) The application required by Chapter 0180-24-.04(1) shall be in letter form and shall include:
 - (a) A nonrefundable application fee of five hundred dollars (\$500).
 - (b) A copy of the applicant's license or registration (if applicable) under the Tennessee Residential Lending Brokerage and Servicing Act of 1988 (*T.C.A. § 45-13-101 et seq.*)
 - (c) The name and complete business address or addresses of the applicant.
 - (d) Evidence that the applicant is an approved HUD lender.
 - (e) A current audited financial statement.
 - (f) If the applicant is a corporation, a copy of its charter and bylaws.
 - (g) A copy of the applicant's lending policies.
 - (h) A resume for each of the applicant's executive officers including the officers' date of birth.
 - (i) A copy of the most recent federal tax return for each of the applicant's executive officers.
 - (j) A statement as to whether the applicant or any employee of the applicant has been convicted of a felony and, if so, supporting details.
 - (k) A copy of the information to be provided to the borrowers by the lender pursuant to *T.C.A. §47-30-109* and Chapter 0180-24-.05.

(Rule 0180-24-.04, continued)

- (l) A sworn, notarized, statement as to the accuracy of the information provided in the application. Such statement shall contain the following or similar language:

Having been duly sworn, and under the penalty of perjury, I hereby certify that the information provided to the commissioner in this application is truthful, complete, and correct.

- (3) *Investigation.* The commissioner may conduct an investigation into any aspect of the application as he or she may deem appropriate. This may include but not necessarily be limited to the character, financial condition and past business practices of the applicant and the applicant's officers, directors, employees, or shareholders.

Authority: T.C.A. §§ 47-30-103 and 47-30-116. **Administrative History:** Original rule filed January 31, 1994; effective May 31, 1994.

0180-24-.05. INFORMATION TO BE FURNISHED TO THE COMMISSIONER.

- (1) By letter, all authorized lenders shall provide the following information to the commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers:
- (a) The borrower's rights, obligations, and remedies with respect to the borrower's temporary absence from the home, late payments by the lender, and payment default by the lender;
 - (b) Conditions or events that require the borrower to repay the loan obligations;
 - (c) The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract;
 - (d) The projected total annual percentage rate applicable under various loan terms and appreciation rates and interest rates applicable at sample ages of borrowers;
 - (e) Standard closing costs;
 - (f) All service fees to be charged during the term of the loan;
 - (g) A statement explaining the unenforceability of loans not in compliance with the Act;
 - (h) A statement explaining that borrowers may be required to pay certain taxes, premiums and assessments;
 - (i) A statement disclosing all fees to be imposed under the reverse mortgage loan contract;
 - (j) A statement explaining how the outstanding loan balance is to be calculated;
 - (k) A statement explaining that prepayment is permitted without penalty;
 - (l) A statement disclosing the amount owned by borrower when loan is due;
 - (m) A statement designating the lender's employee or agent designated to answer borrower's inquiries and the telephone number at which the borrower may contact such employee or agent;
 - (n) A statement explaining the rights of the parties if lender defaults; and

(Rule 0180-24-.05, continued)

- (o) A statement listing the acts prohibited under *T.C.A. § 47-30-115*.

Authority: *Section 1: T.C.A. §§ 47-30-109, 47-30-115 and 47-30-116. Administrative History: Original rule filed January 31, 1994; effective May 31, 1994.*

0180-24-.06. EXAMINATIONS.

- (1) *Lenders subject to examination.* For the purpose of discovering violations of the Act and this rule, the commissioner may conduct an examination of those authorized lenders which obtain their status on as authorized lender by virtue of the commissioner's approval of an application submitted pursuant to *T.C.A. § 47-30-103(c)* and Chapter 0180-24-04. Such examinations may include an inspection of all books, records and papers used by such lenders in the transaction of their business or making reverse mortgages pursuant to the Act.
- (2) *Subpoenas.* In connection with an examination conducted pursuant to Chapter 0180-24-.06(1), the commissioner may summon witnesses and examine them under oath concerning matters relating to the business of such persons or such other matters as may be relevant in the discovery of violations of Title 47, Chapter 30 or this rule.
- (3) Cost of examinations.
 - (a) For the sole purpose of recovering the cost incurred through an examination conducted pursuant to Chapter 0180-24-.06(1) the commissioner may impose a special assessment upon any authorized lender examined pursuant to Chapter 0180-24-.06(1).
 - (b) To impose a special assessment, the commissioner must notify the lender in writing and include an itemized statement showing the nature of the costs to be recovered by the department and the dates on which the department incurred such costs.
 - (c) Payment of all special assessments shall be due no later then thirty (30) calendar days from the lender's receipt of the notice of such assessment.
 - (d) All special assessments collected pursuant to this rule shall be used at the exclusive discretion of the commissioner in the administration of the department.
 - (e) If a lender fails to pay a special assessment when due, the commissioner may, in addition to other applicable remedies, levy a late payment penalty of up to one hundred dollars (\$100) per day for each day the payment is overdue. All penalties and fines collected pursuant to this rule shall be used at the exclusive discretion of the commissioner in the administration of the department.

Authority: *T.C.A. § 47-30-116. Administrative History: Original rule filed January 31, 1994; effective May 31, 1994.*

0180-24-.07. ENFORCEMENT.

- (1) Upon finding probable cause to believe that an authorized lender or any other person, firm, or corporation is in violation of this chapter, or of any law or any rule or regulation of this state, the United States or an agency of the state or the United States, the commissioner shall, after affording reasonable notice and opportunity to be heard to the lender, order the lender to cease and desist from the violation.

(Rule 0180-24-.07, continued)

- (2) If a lender fails to comply with or appeal the commissioner's cease and desist order, the lender is subject to a civil penalty of one thousand dollars (\$1,000) for each violation that is the subject of the cease and desist order. The penalty imposed under this section is in addition to and not in lieu of penalties available under any other provision of law applicable to a reverse mortgage lender.
- (3) Upon a finding that a reverse mortgage lender has violated this chapter, the commissioner may revoke, temporarily or permanently, the authority of the lender to make reverse mortgage loans.

Authority: T.C.A. § 47-30-116. **Administrative History:** Original rule filed January 31, 1994; effective May 31, 1994.